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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 June 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Poland must take immediate steps to address interference with the independence of the judiciary- Amnesty International's written statement for the ID with the Special Rapporteur on the independence of judges and lawyers

At its 38th regular session, the UN Human Rights Council (HRC) will discuss the findings and recommendations of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland which took place from 23 – 27 October 2017.[1]

In his report, the Special Rapporteur highlights the fact that the Polish government has actively hampered the independence of the judiciary by enabling the executive and legislative branches to interfere with the administration of justice. Such interference threatens to have significant negative consequences for human rights in the country.

The Special Rapporteur's findings reflect Amnesty International's own research, which has concluded that legislative changes introduced by the government of Poland in 2016 and 2017 have eroded the independence of the judiciary. These "reforms" threaten the right to due process and other safeguards of a fair trial, guaranteed by the International Covenant on Civil and Political Rights, to which Poland is a signatory. The most significant aspect of the reform is that the laws governing all arms of the judiciary – Constitutional Tribunal, National Council of the Judiciary, common courts and the Supreme Court – have been modified to ensure that the executive can exert political influence over courts, judges, and judicial institutions. As they are functionally connected to each other, the reform has consolidated control over the entire judiciary in the hands of the government and the parliament, which is controlled by the governing party.

In August 2017, the amendment of the Law on Common Courts entered into force. It empowered the Minister of Justice to appoint and dismiss presidents and vice-presidents of courts. Pursuant to the amendment, the Minister dismissed 160 presidents or vice-presidents of common courts between August 2017 and early May 2018. There are 377 courts in Poland.[2] In March 2018, the government itself acknowledged that the Minister has replaced about 18% of presidents and vice-presidents of the courts.[3]

The amendment of the Law on the National Council of the Judiciary (NCJ) came into force in January 2018. The law gave Parliament the power to appoint the 15 judges that comprise the NCJ. The Polish Constitution, however, expressly limits the number of members of the NCJ appointed by Parliament to six. On 5 March 2018, Parliament appointed the new NCJ members, eight of whom happen to be the new presidents or vice-presidents of courts appointed since August 2017 by the Minister of Justice.[4]

The Law on the Supreme Court entered into force on 3 April 2018. It introduced various changes, including lowering the retirement age for judges from 70 to 65 years. On 3 July 2018, the terms of 40 per cent of the currently sitting Supreme Court judges will expire. It is not yet clear how many of the retired Supreme Court judges will apply for an extension of their term and how many President of Poland will approve for such an extension. Any new Supreme Court judges will be elected by the new National Council of the Judiciary, which was elected in March 2018 by the Parliament

[1] UN Doc. A/HRC/38/38/Add.1, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/38/Add.1
[2] http://monitorkonstytucyjny.eu/archiwa/3982
[3] Executive summary of the government's White Paper on the Reform of the Polish Judiciary, March 2018, p. 5: https://www.premier.gov.pl/files/files/white_paper_en_-_executive_summary.pdf
[4] http://wyborcza.pl/7,75398,23108831,krakowa-rada-ziobrownictwa-zobacz-kim-sa-nowi-sedziowie.html

rather than by judicial self-governing bodies.[5] In addition, pursuant to the amendment of the law, the Supreme Court will also have lay members elected directly by the Senate.[6] The amendment of the Law on the Supreme Court also introduced two new chambers: the Disciplinary and Extraordinary Chambers.

The new Extraordinary Chamber will be able to reopen – within three years after entry into force – any final court decision that became valid after 17 October 1997.[7] This can be done without the knowledge or consent of the parties. The current Law on the Supreme Court also includes provisions that allow opening closed disciplinary proceedings against judges on the Minister of Justice's motion.[8]

The above-described changes have been subjected to strong criticism from the Council of Europe's Venice Commission, European Commission, OSCE Office for Democratic Institutions and Human Rights (ODIHR) and others.[9] On 1 June 2018, pursuant to a referral of the Irish High Court, the Court of Justice of the European Union (ECJ) held a hearing, in which it was expected to assess whether Poland was still operating under the rule of law, and whether extraditing a defendant from Ireland to Poland would involve a "real risk of being subjected to arbitrariness in the course of his trial".[10] The decision of the ECJ on the matter is expected by mid-July 2018.

Amnesty International would like to take this opportunity to reiterate some of its own concerns which are also highlighted in the findings of the Special Rapporteur.

First, the Special Rapporteur has emphasized that the government has undermined the independence of the judiciary as a system.[11] It is not a question of individual pieces of legislation, but rather the cumulative effect of the changes that threaten to have far-reaching negative consequences on human rights in Poland.

These changes affect the composition and functioning of common courts, the Supreme Court, the National Council of the Judiciary, as well as the Constitutional Tribunal. Amnesty International believes that such profound structural changes could be amended only by systemic reforms that will restore the independence of the judiciary in Poland.

Second, the Special Rapporteur has recommended that the Law on the Supreme Court should be amended to bring it into line with the Constitution and international standards relating to the independence of the judiciary. This should include "eliminating the provisions concerning the participation of lay judges in proceedings before the Supreme Court concerning extraordinary appeals and disciplinary cases". [12] The Special Rapporteur has also called for a review of the current broad subject-matter jurisdiction of the Extraordinary Chamber and the Disciplinary Chamber in line with his recommendations. Amnesty International's research indicates that the new regulation governing disciplinary proceedings does not comply with due process requirements. Nor are there safeguards to ensure that disciplinary proceedings will not be abused in politically-motivated cases against judges.[13] There are serious concerns over the operation of the future Disciplinary Chamber of the Supreme Court, which will be elected by the politicised National Council of the Judiciary. In addition, the first instance decisions into disciplinary proceedings will be made by

[5] Amnesty International, Comparison of the 4th Rule of Law Recommendation presented by the European Commission on 20th December 2017 and the amendments proposed by the government of Poland, April 2018:
http://www.amnesty.eu/content/assets/MythBuster-CommissionVsPoland.pdf

[6] Law on the Supreme Court, Art. 61. §2. http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20180000005/U/D20180005Lj.pdf

[7] Law on the Supreme Court, Art. 115§1

[8] Law on the Supreme Court,Art. 124§1

[9] http://europa.eu/rapid/press-release_MEMO-16-2644_en.htm;
http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e;
https://www.osce.org/odihr/315946?download=true

[10] Request for Preliminary Ruling Pursuant to Article 267 TFEU dated the 23rd day of March, 2018, paras 29 and 40
http://www.courts.ie/Judgments.nsf/0/FD843302847F2E228025825D00457F19

[11] UN Doc. A/HRC/38/38/Add.1, para 74

[12] Recommendation D(e), UN Doc. A/HRC/38/38/Add.1.

[13] Amnesty International. *"Reform" of the judiciary in Poland poses risk to the right to fair trial: Briefing by Amnesty International ahead of the General Affairs Council Meeting*. March 2018.

disciplinary panels within the common courts appointed by the Minister of Justice who is at the same time the Prosecutor General, entrusted with broad investigative powers.[14]

Third, the Special Rapporteur has also called for an amendment to the Law on Common Courts to remove the discretionary power of the Minister of Justice to appoint and dismiss presidents of courts.[15] Amnesty International reiterates this call, particularly in the light of the government's downplaying its significance by arguing that the effect of this reform is mainly "administrative" and will not affect the way the judges adjudicate.[16] In fact, the court presidents have vast powers within courts. They can assign judges to the divisions, set out their duties, and play an important role in the case-management process.[17] By empowering the Minister of Justice to remove the presidents and vice-presidents of courts the law further enables the executive to exert political pressure on the judiciary.

In light of the Special Rapporteur's report, Amnesty International urges the Human Rights Council, its Members and Observer States to call on the government of Poland to:

- Constructively engage with the Special Rapporteur and act on his recommendations without delay;
- Urgently amend the Law on the Common Courts, the National Council of the Judiciary and the Supreme Court and remove any provisions that undermine the full independence of the judiciary and put the right to fair trial at risk.
- Ensure that judges can exercise their judicial functions free from retaliatory action or other forms of pressure, including politically motivated disciplinary proceedings, harassment and intimidation.

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[14] Art. 110a of the Law on the System of Common Courts.
[15] Recommendation C(a), UN Doc. A/HRC/38/38/Add.1.
[16] The Office of the Prime Minister of Poland. *The White Paper on the Reform of the Polish Judiciary*. 38 https://www.premier.gov.pl/files/files/white_paper_en_full.pdf
[17] Sadurski, W. *How Democracy Dies (in Poland): A Case Study of Anti-Constitutional Populist Backsliding*. The University of Sydney, Research Paper. January 2018, p 43.

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General Assembly

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Human Rights Council
Thirty-eighth session
18 June-6 July 2018
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the International Humanist and Ethical Union, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Blasphemy laws, dissent and human rights abuses: The plight of prisoners accused of insulting Islam in the Islamic Republic of Iran

"Today (23rd September 2017) is the third year that my daughter goes to school and I am not with her. I have gone on dry and liquid hunger strike since I do not want her to see me behind bars, anymore [...] Farewell life, bury me right here in my cell in Evin."

- Extract from the "Taped Will" of Soheil Arabi, from Evin Prison

This year has seen a wave of pro-democracy and human rights protests across Iran, with thousands taking to the streets against the clerical hold on power, calling for a more open society, and demanding an end to compulsory veiling for women. The authorities have cracked down on activists, intimidating and detaining peaceful protesters, with widespread reports of abuse and torture in custody.

Since the start of the democratic protests in Iran, over 8,000 people have been arrested.[1] At least 50 have been shot dead or died apparently from torture whilst in detention.[2] By January 2018, over 20 civilians had been killed and several thousand arrested. The head of Tehran's Revolutionary Court stated that detained protestors may face 'moharebeh' charges, which carry the death penalty and can be broadly understood as "enmity against God," vaguely defined and often used for political purposes.

Iranian authorities regularly detain and harass journalists, bloggers, political and non-religious dissenters and human rights defenders who criticize the Islamic revolution or the Iranian government. Over the past few years, a number of human rights lawyers who defended non-Muslims in court were imprisoned or fled the country for fear of arrest or prosecution.[3]

As a Shi'a Islamic theocracy, where all laws and regulations are based on unique Jaafari Shi'a Islamic criteria, Iran holds expressions of unsanctioned religious views and expressions of political dissent to be acts of blasphemy. Those arrested for blasphemy are generally charged with 'mofsed-e-filarz' ("spreading corruption on earth"), a broadly defined crime capable of encompassing anything deemed undesirable by the state. There is no set penalty for such a wide-ranging crime, and punishments can run the gamut from a few months in jail to execution, with any prison sentence often supplemented by torture. In addition to suppressing political dissent and calls for reform within the established tradition of Shi'a Islam, blasphemy charges are also used to persecute religious minorities, including Atheists, Bahá'ís, Sunnis, Sufis, and Christians.

The penal code of Iran was formally changed in 2012. In addition to numerous other human rights issues that remain under the new penal code, the crimes of "apostasy" and "blasphemy" are still in force and are punishable by death.
The UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the UN Secretary-General have noted that these crimes are vague and broadly defined, leading to arbitrary interpretation and application.
Over the past few years, Iranian authorities have charged many reformers within the Shi'a community with "insulting Islam," criticizing the Islamic Republic, and publishing materials that allegedly deviate from Islamic standards. [4] For example:

- In 2016, authour and human rights activist Golrokh Ebrahimi Iraee was convicted of "insulting the sacred" based on her unpublished story in which a protagonist - who was angered by stonings - burns a Qur'an. In

[1] https://www.washingtontimes.com/news/2018/jan/16/iran-tortures-kills-protesters-8000-citizens-arres/
[2] https://www.theguardian.com/world/2018/jan/09/iran-protests-deaths-custody-human-rights
[3] http://www.uscirf.gov/sites/default/files/Tier1_IRAN.pdf
[4] http://www.uscirf.gov/sites/default/files/Tier1_IRAN.pdf

February 2017, Ebrahimi Iraee was released on a short leave but arrested soon afterward for failing to return to prison on time. She remains imprisoned in Evin Prison.[5]

- In October 2007, poet and human rights activist Reza Akvanian was sentenced to three years in prison and 40 lashes for allegedly insulting the Twelfth Imam in his poetry.

The Iranian government exercises strict control over expression of religious ideas and dissent online as part of its broader censorship and targeted use of technology. In June last year, Iranian officials announced that they had reached an agreement with Telegram to block "anti-religious" content. This came shortly after a prominent cleric stated that unrestricted internet would be "a tool for the toppling of Islam." Throughout 2017, several young people were convicted of "apostasy" or "insulting the sacred" online. Two examples:

- In February 2017, Iranian courts sentenced Sina Dehghan and Mohammad Nouri to death for posting "anti-Islamic materials" on social media.

- In April 2017, three young men were each sentenced to 12 years in prison based on their political and religious commentary on the popular messaging application Telegram.

This phenomenon is not new. Iranian authorities have been arresting and sentencing to death many activists, journalists and dissenters after activity online and via social media, variously on the grounds of alleged insulting of Islam or the prophet, for years. Some examples:

- In August 2013, an engineer named Rouhollah Tavana was sentenced to death on a charge of "insulting the Prophet of Islam" ('Sabbo al-Nabbi'), after allegedly insulting the prophet in a video clip. The Court also sentenced him to imprisonment and flogging on charges of "alcohol consumption," "making alcoholic beverages," and "illicit sexual relations." A Revolutionary Court then sentenced him to a further three years' imprisonment after convicting him of "insulting the founder of the Revolution" and "insulting the Supreme Leader." In February 2014, the Supreme court upheld the death sentence of Ruhollah Tavana for insulting the Prophet Mohammad.[6]

- In 2012, Iran's Supreme Court confirmed the previously handed down death sentence for 35-year-old web designer and Canadian resident Saeed Malekpour. He had returned to Iran in 2008 to visit his dying father and was arrested for "insulting and desecrating Islam" after allegedly creating a computer program used by others to download pornography.

- In November 2013, Soheil Arabi was arrested at his home in Tehran. During interrogation, he was pressured into confessing his alleged crimes. He was then transferred to Section 350 of Evin, which is under control of the Iranian judiciary. On 30 August 2014, a five-judge panel of Branch 76 of the Criminal Court of Tehran sentenced Arabi to death for "insulting the Prophet of Islam" in eight Facebook accounts allegedly belonging to Arabi. On 4 September 2014, Branch 15 of the Tehran Revolutionary Court also sentenced Arabi to three years in prison on charges of "insulting the Supreme Leader" and "propaganda against the state" in his postings on Facebook. In late September 2015, his sentence was commuted to "reading 13 religious books and studying theology for two years". In January this year, Arabi's mother, Farangis Mazloom, confirmed that he was on hunger strike in an interview with Radio Farda.[7] Agents of the Greater Tehran Prison severely beat Soehil Arabi to force him to end his hunger strike and dealt severe blows to his head.[8]

The torture and hunger strike in Arabi's case is not unique; an increasing number of Iranian prisoners are risking their lives by going on hunger strike in protest against prison conditions or mistreatment, or simply to demand proper

[5] http://www.freedom-now.org/campaign/golrokh-ebrahimi-iraee/

[6] https://www.amnesty.org/download/Documents/8000/mde130122014en.pdf

[7] https://www.radiofarda.com/a/b3-prisoner-of-conscience-soheil-arabi-on-hunger-strike-again/29000833.html

[8] https://zandaniran.blogspot.com/2018/03/blog-post_17.html, http://iran-hrm.com/index.php/2018/03/19/hunger-striking-soheil-arabi-taken-to-hospital-after-being-beaten-by-prison-authorities/

medical care. In August last year, the previous Special Rapporteur on the human rights situation in Iran, Asma Jahangir, expressed her deep concern about the situation of a number of prisoners who have been on prolonged hunger strike to protest against their transfer to a high-security section of Rajai Shahr prison in Karaj, West of Tehran, and about their treatment while in detention. In September, Reporters Without Borders (RSF) said that it is "extremely concerned about the prison conditions of detained journalists and citizen-journalists in Iran, especially those who are ill or on hunger strike. The plight of Soheil Arabi and Ehssan Mazndarani is particularly alarming."

The cases and issues noted in this written statement bring to light a multitude of violations currently being committed within the justice and legal system of Iran against the human rights of its citizens. Including, for example: banning in law so called "blasphemous" expression; the use of torture and inhumane and degrading treatment and punishment; the use of the death penalty; and complete lack of freedom of religion or belief for those who do not identify within the school of Shi'a Islam.

We therefore call on the Human Rights Council to urge Iran to:

- Release immediately and unconditionally all persons detained for peacefully exercising the rights to freedom of expression, association and peaceful assembly. This includes all those individuals mentioned in in this statement.
- Repeal all legal provisions that infringe upon the freedoms of expression, assembly and association, as guaranteed by the International Covenant on Civil and Political Rights. This includes the repeal of its anti-blasphemy laws.
- Ensure genuine freedom of expression and information, including on the Internet, by putting an end to the harassment against journalists, bloggers and human rights defenders
- Cease censorship of the media, as well as the harassment and arbitrary detention of journalists and political and religious dissenters.
- Amend national legislation that discriminates on the basis of religion or belief, or political thought, and ensure that non- Shi'a citizens have access to a secular justice system.
- Strengthen measures aimed at the protection of religious and non-religious minorities, in accordance with articles 13 and 14 of its Constitution.
- Abolish the death penalty. (Failing that in the short-term: revise the Islamic Penal Code to ensure consistency with its international obligations, including article 6 of ICCPR, so that the death penalty is reserved for most serious crimes.)
- Ratify the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.
- Commute all death sentences, in particular executions of political prisoners and those dissenting from the mainstream religious view.
- Cease the torture and other cruel, inhuman or degrading treatment or punishment against prisoners in the country; and ensure full respect for their dignity and autonomy. Investigate with urgency reported cases, including those mentioned in this statement.